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A

REPLY

TO A

Sheet of Paper,

INTITULED,

The MAGISTRACY and GOVERNMENT

OF

ENGLAND

VINDICATED:

OR,

A Juſtification of the *Engliſh* Method of Proceedings againſt Criminals, by way of Anſwer to the Defence of the late Lord RUSSEL's Innocence, &c.

Sic eſt. acerba fata Romanos agunt,
Celuſque fraternæ necis,
Ut immerentis fluxit in terram Remi
Sacer nepotibus cruor. Hor. Epod. 7.

Written by *John Hawles*, Barriſter of *Lincolns-Inn.*

LONDON,

Printed for *Iſrael Harriſon* at *Lincolns-Inn Fore-gate*, and *Jacob Tonſon* at the *Judges-Head* in *Chancery-Lane* near *Fleet-ſtreet.* MDCLXXXIX.

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Sic est aurea fata Romanae agens,
Sed quae fata ac vires,
Dum [illegible] Rem
[illegible] Hor. Epod. 7.

Written by John Hawley, Barrister of Lincoln's Inn.

LONDON,

Printed for Israel Harrison at Lincoln's Inn Fore-gate, and Jacob Tonson at the Judges Head in Chancery-Lane near Fleet-street. MDCLXXXIX.

A REPLY TO THE MAGISTRACY and GOVERNMENT OF ENGLAND VINDICATED, &c.

HAving read and conſidered a ſheet of Paper Entitled, *The Magiſtracy and Government Vindicated, or a Juſtification of the* Engliſh *Method of Proceeding againſt Criminals, by way of Anſwer to the Defence of the late Lord* Ruſſel's *Innocence*, &c. I could not but wonder at the Imprudence of the Publiſher, and of thoſe who applauded it, it being far from a ſatisfactory Anſwer; and in truth it ſerves only ro refreſh the Memory of things which the criminally concerned in have reaſon to wiſh forgotten. It muſt likewiſe be remembred, that whoever juſtifies what is generally taken to have been ill done in the former Reigns, in conſequence accuſes the preſent Government of Injuſtice, the ſetting things right, which ſuppoſes them to have been out of Order, being the true reaſon and ſupport of the preſent Government. I do not ſay that any thing heretofore ſuppoſed to have been ill done, or that any Perſon ſuppoſed to have had an hand in thoſe things, ſuppoſed to have been ill done, ought therefore to own himſelf, as he is reputed, to be an ill Man; or that the matter condemned as a wicked and illegal thing, ought therefore to be ſo conceded by him, as that he ſhould not vindicate himſelf from the Aſperſion of having an hand in the Matter he is ſuppoſed to be guilty of; or if he had an hand in it, that he ſhould not defend himſelf, by ſhewing the Matter was no Crime. But I am ſure the Perſon who vindicates himſelf ought to be very circumſpect in ſo doing. There is a very great difference between pardoning all Criminals, and declaring that no Man ſuppoſed a Criminal hath done any thing amiſs; the firſt is an Act of grace, the laſt argues the Perſons guilty of Injuſtice, who ſuppoſe a Man to be a Criminal, which Opinion they afterwards retract, and own themſelves in an Error.

I know it is a very invidious thing to look back and ſee all the things which were ill done for about nine years paſt; all that at preſent I'le ſay is, that of all the illegal Proſecutions, the Proſecutions in Capital matters juſtly gave moſt Offence; and if my Lord *Ruſſel* was not illegally proſecuted, rudely handled, and without ſuch Cauſe as the Law ſays is good Cauſe, put to death, I will agree that there was no reaſon to find fault with any thing done before the firſt of *December* 1688. I do not ſay but that the Injuſtice to *Stephen Colledge*, Collonel *Sydney*, and Mr. *Corniſh* was more palpable, but I ſay the uſage of my Lord *Ruſſel* appeared to be equally unjuſt: all which the Author of the above-mentioned Sheet thought to ſlurr over, by inſinuating it was the *Engliſh* Method of proceedings, which he calls a juſtification of the *Engliſh* Method of Proceedings in Criminal Matters, *&c.* And by thoſe words at firſt ſight one would think that the Author writ to ſome Foreigners, or if they were *Engliſhmen*, to Perſons who did not underſtand the *Engliſh* method of Proceedings; and if ſo, it would have been fit for him to have ſet down what the *Engliſh* Method of proceedings was, which he does not: and if he intended the Paper to be the *Engliſh* method of proceedings againſt the Lord *Ruſſell* vindicated, he ought to have expreſt what the method of proceedings againſt him was, and have ſhewed the Objections, and vindicated it, by ſhewing the Reaſons of thoſe proceedings, which he hath not done. The truth is, inſtead of treating of the matter according to the purport of the Title, he only falls on thoſe who find fault with thoſe proceedings, and ventures on a Point of Law, which he pretends is the reſult of the Evidence given againſt the Lord *Ruſſell*, without ſhewing what Crime the Evidence againſt the Lord *Ruſſell* proved him Guilty of. I will not in this place ſhew the unfair Proceedings, nor how far the Evidence againſt him proved him guilty, nor what Crime the Evidence amounted unto; it will come more properly in where it is ſaid his Relations were ſatisfied with the juſtneſs of his Tryal. In the intended Reply to this Anſwer, I thought it better to repeat the very words of the Anſwer I intended the Reply to, that it might not be ſaid I wreſted the Sence of the words of it; and if I omit ſome Clauſes of the Anſwer, it is becauſe they are only Reflections on the Perſons pretended to be anſwered, and do not go to the Matter or Repetitions of that ſaid before, and therefore are not worth taking notice of.

In the preſent Age, when the variety and multiplicity of new Prints is ſuch, that the Money and time required for their purchaſe and peruſual, is more than an ordinary Gentleman can reaſonably allow; it may deſervedly be thought a nuſance to the publick,

lick, to have their numbers encreased, especially since the complaint of the ingenious Author of the Trimmers Character, that for this very cause he could almost have wished himself unable to read; but yet the support of Magistracy and Government is a noble Theme, so useful to the publick, and so generally agreeable to the humour of Mankind, that the meer Subject will (I presume) be an excuse for this Publication if any thing can be so.

I agree the Prints of this present Age are very numerous, and I can give my self no other reason for it but one of these four, The exposing to view the Irregularities, not to give them an harsher name, in the two former Reigns, which naturally provokes an Answer by way of Justification, and *vice versa*, which I reckon for two of the Reasons; the Authors Profit, which I reckon for a third; or else a certain Matter said by a suspected Mad-man of late years in the Court of Chancery, which I reckon for a fourth Reason. The Story was this, A certain elder Brother, being reputed a Malignant in the late times, his Estate was liable to Sequestration: His younger Brother had been of the other thriving side; so it was agreed between them two, that the Elder should fain himself mad, and the Custody of him and his Estate should be begged by the younger. It was done as agreed: The King returning, the elder would needs be *compos mentis*, which the younger would by no means admit, but kept him in private and in the dark. By accident the elder found a way to discover the Oppression to a Friend, and desired him to consider how to relieve him: Accordingly the Friend suggested this matter to the Chancery; which Court made an Order for the youngers bringing the Elder Brother into Court, which was done: the poor man being relieved from imprisonment and darkness, and having not convers'd with any person but the above Friend for a long time, and that but once during his Confinement, was overjoyed, when in Court, and consequently very lavish of his Tongue; of which the younger Brothers Council took notice, and said, My Lord, you may easily see what this Man is in his Understanding by his much talking. To which the suspected Mad-man replyed, as to the Council, Sir, if you had been restrained from speaking so long as I have been, you would be glad to make use of the liberty of your Tongue when allow'd you: upon which the Custody of him and his Estate was discharged: but I own it was the saying of a suspected Mad-man, and therefore not worth regarding or applying. I confess I should have guess'd that one of those four Reasons had been the Motive of writing this Sheet of Paper (for I cannot call it a Book, and I will not be so unmannerly as to call it a Libel or Pamphlet; because if if it was not written, yet it was perused and approved of

by

by all the Criminals in my Lord *Ruſſells* Sufferings) but that the Author himſelf gives us the reaſon of writing it, by way of excuſe, that it was for the ſupport of the Government he writ it. It is true, he ſays, the ſupport of the Magiſtracy and Government is a noble Theme, ſo that the Words made one hope he intended his Diſcourſe of Magiſtracy and Government in general: But in that he as much deceives the Reader as in his Title Page; for there is not one word in his Diſcourſe more of Magiſtracy or Government, than that Encomium. But I find he intended nothing but the Juſtification of the Government in the particular Act of putting the Lord *Ruſſell* to death; and therefore If I had been his Adviſer, he ſhould never have made ſo large a Porch, but made it ſuitable to his Houſe, and entitled it *The Magiſtracy and Government of* England *vindicated, in condemning and executing the Lord* Ruſſel: and if the Author had a mind to it (tho he needed not) I would be content he ſhould have added by way of Anſwer to the defence of the late Lord *Ruſſells* Innocence, *&c.* the Paper in no part of it pretending to more than what that Title fully comprehends; and being ſo, is one of the higheſt Affronts that ever was put upon the Legiſlative Power; which, out of a Senſe of that Lords Innocence, and of the Irregular Proceedings againſt him, ſo cunningly couch'd, that it was at leaſt doubtful, whether by any ordinary Courſe of Law right might have been done to his Memory and Children, have thought fit by an Act for that purpoſe, to reverſe the Attainder.

At this time of day none would have thought that a neceſſity ſhould happen of writing upon ſuch a Topick, when every Engliſh *Proteſtant was entertaining himſelf with the pleaſing proſpect of Impartial, due, and indifferent Adminiſtrations, when Authority was becoming amiable and eaſie to the People, when the People were inclining to a zeal and affection for the Honour of Magiſtrates; in ſhort, when the Law was recovering its clouded credit: in this Conjuncture none expected to ſee all the Pillars and Poſts in the Town dawbed with plentiful Title Pages (like ſo many Hiſtriomaſtrix's of* Will. Prynn's) *directing their Spectators to Books of Obloquy and Reproach, not only on the Perſons and Opinions, but the Authority of Judges, when neither of the three are corrigible, or ſo much as cenſurable, any otherwiſe than in and by a Parliament; much leſs was it expected, that Gentlemen of the Long Robe would appear in Print for to ridicule their own Profeſſion, and expoſe our Law even to the ſcorn of Foreigners. It would not have been ſo very ſtrange to have ſeen a Doctor of the Commons exerciſing his Wit and Raillery on the Common Law Proceedings, when he ſaw his deareſt* Diana, *I mean, his Excommunication-Proceſs in danger of becoming uſeleſs, and a fair occaſion given him for*

ſuch

ſuch an Eſſay from the Diſguſt of the People againſt Weſtminſter-Hall.

Had any thing of this kind been done in the time of the Government, which this Paper pretends to vindicate, it was ten to one but that he had taken a walk from *Aldgate* to *Newgate* for it, and from thence to *Tyburn*, and it was well if he eſcaped a ſwing there: it might have been High Treaſon within the Stat. of *Edw.* the 3*d.* for it ſcandalized the Government, conſequently alienated the Affections of the Subject from the King, which tends to an Inſurrection or Rebellion, conſequently is compaſſing and imagining the death of the King; and ſo the laſt is as natural a conſequence from the firſt, as King *Pepin* is from *Napkin Nipkin*. But this Author had the good Fortune to write in a better time, when we are not only entertaining our ſelves with the Proſpect of, but we are well aſſured impartial Juſtice will be adminiſtred, *&c.* But for all the Authors luſhious commendations of future times, methinks he a little forgets himſelf; for if Authority is but becoming amiable and eaſie to the People, and the People but inclining to Zeal for the Honour of Magiſtrates and the Law but recovering its clouded Credit; there was a time when Authority was not amiable or eaſie to the People, nor the People inclining to Zeal for the Honour of Magiſtrates, and the Law clouded: and if he admits that, it will be hard for him to vindicate the Government in thoſe times; and even againſt himſelf he ſhews a neceſſity of enquiring into the reaſon of thoſe things. We do not applaud but accuſe the negligence or wretchleſsneſs of that man, who recovering out of a great ſickneſs, be it a Feavor or the like, doth not conſider what threw him into that Diſtemper, whether it was a Cold, a Surfeit, or what elſe, to avoid the like Diſeaſe another time: And it is plain, that Perſons that can ſtand by and ſee others, though their neareſt Relations, deſected, do not do it as taking pleaſure in ſeeing the Corps of their deceaſed Friends mangled, but to know what carried them out of this World, to prevent the like diſaſter, if they could, in the ſurviving. What hath been may be again: It is fit therefore at this time to ſee the Cauſes why Authority was not amiable to the People, and why the People had not an affection for the Magiſtracy and Government, when it is ſo agreeable to human kind, and how the Credit of the Law came to be clouded, and even at this time, when we are recovering at leaſt, if not recovered out of the Diſeaſe. When we deſponded of a Recovery, it was as fooliſh to think of the Cauſes, as it is of a dying man, paſt hopes, to bethink himſelf what brought him into that Sickneſs. It is a vain thing to ſay that the Authority of Judges exempts them from an enquiry into, and cenſure of their Opinions: A Judge is *omne exceptione*, major in reſpect of the Suitor; ſo that he cannot except againſt a Judge as he may againſt a Juror, but his Opinion is cenſurable by all, and puniſhable if he act againſt his Knowledge: and as I think his

Opinion is cenſurable, ſo I think his perſon ought to be pointed at and named in Juſtice to the Innocent, leaſt a Perſon Innocent ſhould be ſuſpected or concluded to be the man whoſe Opinion is cenſured. I confeſs when I read the Character of the Trimmer, wherein the Author ſays, he could almoſt have wiſhed he could not have read, I cannot but remember that there was a time when I could have wiſhed I had not read a Word of Law; for it was impoſſible to think how many men loſt their Lives, and were ruined in their Eſtates, not only without, but even againſt Law: but thoſe that ſaw it, muſt not only commiſerate them, but in ſome ſort bear a part in their Sufferings: And the matter went a little further, for none was ſecure, but it might be his own turn at ſome time or another, and his being a Lawyer no way ſecured him, it rather indangered him; for he was capable of being a Spy and a Diſcoverer, and in that reſpect the moſt Ignorant, which the Lawyers call *Lay Gents*, were the moſt unconcerned; they ſtill thought there was ſome ſort of Juſtice, and that if they were innocent they were ſafe. And on this Rock the Lord *Ruſſell*, Collonel *Sidney*, and Mr. *Corniſh* ſplit. When the Lawyers and better adviſed fled, I think it is not only excuſable, but the Duty of Lawyers, to diſcover the Erroneous Opinions, and much more the wilfully illegal Practices of Judges and of Perſons of their own Profeſſion, who were indeed authoriſed and ſworn to execute Juſtice, but practiſed the contrary, their Patents neither did nor ought to exempt them from cenſure more than it does from puniſhment. If they have done according to Law, or according to the beſt of their Underſtandings, the firſt can do them no harm, and the laſt ought not to be inflicted on them; but if they have acted contrary to both, I think they ought to be diſcovered and expoſed; nay, I think a Lawyer is not ſafe in concealing them. If it were ſo fatal to the Lord *Ruſſel*, which as the Author ſays, was ſo much pitied in his Fall, to be knowing of matters treated of in ſeveral Conſults, and not diſcover them to the Government, a Lawyer may well ſuſpect that it may be as great a Crime in him to know ſeveral Perſons, tho of his own Profeſſion, guilty of actions more hainous than the matters treated of in thoſe Conſults, and not diſcover them. If a Lawyer ſhould be guilty of Murder, and another of his Profeſſion ſhould know it and not diſcover it, would it be an excuſe for him to ſay that that other was a Gentleman of the long Robe? And what reaſon is there for the Gentleman of the long Robe to be ſo Civil to theſe Criminals, though of their own Profeſſion? Were not they the Perſons who in affront to the Inns of Courts, and in defiance of the Law, hanged up two of their own Profeſſion before the Gates of three of the Inns of Court; and if the fourth Inn eſcaped, it was not for want of good Will but Opportunity? And had they not till of late hanged up the parboiled Quarters of two Perſons at *Temple-Bar*, whereof one was a Bar-

riſter

riſter at Law, in affront to the two Neighbouring Inns of Court, to ſhew the power of theſe Criminals, rather than their knowledge in the Law, to the reproach of their Profeſſion, and expoſing our Law to the ſcorn even of Forreigners? The Doctors of the Commons have been but little to blame; their Oppreſſions, if any, have been very moderate; theirs never extended farther than the reſtraint of Perſons, ours have been loaded with Fetters, and generally ended with Blood; and therefore I will not uſe the Perſon of a Doctor of Commons to ridicule, expoſe, or accuſe the Proceedings of the late Times, but I will ſet up *John a Stiles* and *John a Nokes*, the ordinary Plaintiff and Defendant in our Law, to accuſe, expoſe, ridicule, and defend Dialoguewiſe, the late Proceedings in Capital Matters; the laſt Part of this Paragraph being beſt anſwered in that manner. But beforehand I muſt tell you their Characters; *John a Stiles* is a Man no way concerned in the Proceedings of the late Times, and is a meer Lay man; that is to ſay, a Man who underſtands nothing of Law, but reaſonably ſenſible, and has the Curioſity to read all Pamphlets and Books which come out in Print. *John a Nokes* was a Common Lawyer of no great note or underſtanding, but zealous to vindicate the Law; they were acquaintance, often met and diſcourſed at a private Table in a Coffee-houſe: And *John a Stiles* began.

J. S. Having nothing elſe to do, I have read over ſome printed Tryals of Perſons who ſuffered, particularly of *Edward Fitzharris*, *Stephen Colledge*, *William* Lord *Ruſſell*, Colonel *Sydney*, and Mr. *Corniſh*, and the Charge to and Diſcourſe with the Grand Jury which paſſed on the Earl of *Shaftsbury*, and I cannot but wonder that ſo many wiſe Heads as have been laid together to frame the Common and Statute Law of *England*, ſhould make or allow it to be ſo very uncertain as it is, and even in the Matters of greateſt concern, I mean Capital Matters, which I thought had been certain: For I remember *Howell* in his *Dodonaes Grove*, wherein he makes uſe of our Names in Civil Matters, commends the *Engliſh* Method (as a late Author hath called it) of Proceedings againſt Criminals at an high rate; but to me nothing ſeems more uncertain, and between you and I, I hope thoſe Prints may never light into Forreigners hands, for if they do, it will expoſe our Profeſſors of the Law, and even the Law it ſelf to their ſcorn.

J. N. I own the uncertainty of the Law is the greateſt Reproach you can give it, though a mighty advantage to the Profeſſors of it. There is a Liberty given by it of giving Judgment any way they pleaſe, and ſtill they have an Authority or Precedent to bear them out; and where the Law is doubtful, you cannot blame a Judge, if he takes Inſtructions, and a Gratuity for his pains in private: But I do not admit our Law is uncertain, I challenge any Man to ſhew me out of the Tryals you mentioned, or any other Printed and Licenſed, that the Law is or was uncertain.

J. S. To

J. S. To ſatisfie you, look here on *Fitzharris*'s Tryal; Is it not the poſitive Judgment of the Court, that no Freehold is a good Challenge of a Juror in a Tryal of Treaſon? is it not as poſitively reſolved in the Lord *Ruſſell*'s and Colonel *Sydney*'s Tryals, that it is no good Challenge in Tryals of Treaſon? Is it not as plainly the Reſolution of the Court in *Fitzharris*'s Tryal, that the Court hath a power to put off a Tryal in Treaſon to another day, without the Conſent, and even contrary to the Prayer of the Attorney General? And did not the Court as expreſly reſolve in the Lord *Ruſſell* and *Corniſh* their Tryals, that they could not put off their Tryals, no not till the Afternoon without the Attorneys Conſent? Is it not as plain in the charge to the Lord *Shaftsbury*'s Grand Jury, that the Court ſaid that deſigning to Levy War was not Treaſon by the Statute of *Edward* the Third, but was made High Treaſon by the Statute of King *Charles* the Second? and yet was not deſigning alone to Levy War, allowed to be High Treaſon by the Statute of *Edward* the Third in the Lord *Ruſſel*'s Tryal? Was it not agreed by the Court in *Colledges* Tryal, that Proſecutions for High Treaſon on the Statute of *Car.* 2. ought to be within ſix Months after the Fact Committed? Was it not denyed in the Lord *Ruſſells* Tryal that the Statute of *Car.* 2. confined the Proſecutions for Treaſon on that Statute to any time. I am indeed weary of enumerating the ſeveral Contradictions in thoſe Tryals; and even by the ſame Perſons being the Judges in thoſe Tryals, I cannot think my ſelf or any Man ſafe, who is ſubject to ſuch an uncertain Law.

J. N. I own all the things you mention are true, but that doth not prove the Law uncertain, but the Perſon of the Judg.

J. S. I care not where the fault lies, but I am ſure the Subject is in a miſerable Condition; and I am ſure it is not only fit, but neceſſary to make both Judge and Law certain.

J. N. The laſt is certain already, but how to make the firſt certain, is what no Age hath found an Expedient for.

J. S. Make a Law, they ſhall be certain in their Judgments.

J. N. The Law is ſo already, tho' of late days they have made bold to diſpence with that Law.

J. S. Then make a Law they ſhall be puniſhed if they do not obſerve it.

J. N. The Law is ſo already.

J. S. Why then are they not puniſhed?

J. N. Becauſe they are not thought generally to be puniſhable or cenſurable any where but in Parliament, and we have not had any for ſome years.

J. S. Why is not a Parliament called then?

J. N. That is the Kings Prerogative to do, and he hath not thought fit to do it.

J. S. Why is not there a Law then that the King ſhall call a Parliment

a Parliament in the returns of ſome convenient times, as once a Year, or the like?

J. N. The Law is ſo already.

J. S. Why then doth not the King, who hath often promiſed to Govern by the Law, and to have frequent Parliaments, call a Parliament?

J. N. He is adviſed that he is not bound by thoſe Laws; but the calling a Parliament being left to him, he may call a Parliament or let it alone.

J. S. At that rate, for ought I perceive, he will never call a Parliament; for tho' he is reſolved, if he is by Law obliged, to call a Parliament, he will do it; yet if it be but a Diſcretionary Power in him he will not do it: for, as the Matter is at preſent apprehended, the ſitting of a Parliament is an Eclipſe of the Regal Power.

J. N. I do not ſay it is a Diſcretionary part in him, but I think it is a thing he ought in Juſtice to do, as much as conſtituting Judges, and the like, or ſuffering the Terms to be kept, which by the King's Command may be Adjourned, or put *ſine die*, as we Lawyers talk.

J. S. I am ſorry to hear this, for then we Subjects are in a miſerable condition; for at this rate the Judges at *Weſtminſter-Hall* may be as Tyrannical as the *Decem Viri* amongſt the *Romans*; and there is no Redreſs, for they are not puniſhable but in Parliament: And ſome tell the King, and he ſo believes them, as it is reaſonable for him to do, becauſe they skill the Law better than he, That he is not obliged to call a Parliament, notwithſtanding the Statutes: and he will not do it for the above Reaſon; and conſequently they will go on in their Oppreſſions *in infinitum.*

J. N. You are miſtaken in the Law and the Fact, for tho' they adviſed the King He was not obliged by thoſe Statutes to call a Parliament, they meant He was not puniſhable if he did not call a Parliament; and that a Parliament could not meet without His Call, they did not mean that in Juſtice (the word Honeſty is beneath the Honour of a King) He was not obliged to call a Parliament: They own, that where a Power is lodged in the King, in point of Honour, as the Calling of a Parliament, or Diſbanding an Army, as was the Diſbanding the Hounſlow-Heath Army, He ought to do it according to the words and intent of the Acts of Parliament, by which He was obliged to Diſband that Army: And they owned that it was a Reflection upon, I do not ſay an Injuſtice in the King, that He did not perform the Truſt repoſed in Him by thoſe Acts: And you very well remember that That Regal Power of Diſbanding an Army, becauſe it was found the King did not perform His Truſt, was afterwards given to ſome Subjects.

J. S. But ſuppoſe ſuch Subjects ſhould not execute the

Powers given them; or ſhould, as you call it, break the Truſt repoſed in them, Are we poor Subjects in a better Condition than we were before?

J. N. Not at all: You do not conſider the condition of all Sublunary Affairs; you would have all perfectly Eaſie, perfectly Safe, perfectly Certain, whereas you know we are ſubject to Diſeaſes, ſubject to the Malice of other Men, ſubject to the Treachery of other Men, influenced by their Advantages.

J. S. But cannot this be remedied?

J. N. Yes; I think it may, if the Judges were ſafe in the juſt execution of their Offices; and cenſurable if they acted contrarily: which can never be, unleſs their Offices be grantable to them for their lives, and the ſitting of Parliaments be effectually ſecured.

J. S. But what will you do for the paſt Matters?

J. N. Forget them all.

J. S. I cannot poſſibly do it: I have read *Horace* lately, and there are ſome Verſes run ſcurvily in my mind.

Auro repenſus ſcilicet acrior,
Miles redibit. Flagitio additis
Damnum, neque amiſſos colores
Lana refert medicato fuco:
Nec vera virtus, quum ſemel excidit,
Curat reponi deterioribus.

J. N. There is no reaſon to mind them, they are Verſes of an Heathen Author.

J. S. But he ſeems to me to be an Author of great ſence: But you and I have wandred extravigantly from the firſt ſubject-matter propoſed: What have you to ſay why your Law is not certain?

J. N. It is your fault; you have ſerved me as the Perſons in *Ovid's Metamorphoſis* were, drawn me from one matter to another; and I humour'd you in it, in order to give you a ſatisfactory Anſwer; and I think I have done it: for I ſay, the Law is certain; the Expounders of it have been uncertain.

J. S. Why then you would vindicate the Law by aſperſing the Judges, whom you call Expounders of it: But, pray, if the Law be ſo for calling Parliaments, as you have laid it down, why would any Perſons adviſe the King, He was not obliged to call One.

J. N. In the laſt part of your Queſtion you ſeem to have loſt your Memory, you ſaid ſome Perſons had done amiſs; I owned it, and ſaid they were puniſhable for it in Parliament: and I dare ſay, neither you nor I, if we were in their Circumſtances, would have given any other Advice to the King. And, as to the firſt part of your Queſtion, if you will think of it again, you will be of my Opinion, That when the ſame Man, on the ſame Fact and Law, is of different Opini-

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ons, it is the Man, not the Law, is uncertain: and that I take to be a Vindication of the Law; which was the thing I undertook.

J. S. There is some Reason in what you say, and I'll consider of it, and tell you what I think the next time I meet you here.

Since the Press seems open, and Lawyers Books are published without a License, another may assume the same Liberty with equal Authority, and with more reason, when his Province is only to correct the misrepresentations of things, actions and persons, tho' made by Authors of Age, Experience, Figure and Learning (I will not say Candor or Honesty) especially since they are private Men, and having vented their own thoughts in print, they remain no longer theirs, but are equally exposed to the Censure or Applause of every Reader. Besides, 'tis generally presumed, that an Author expects a publick Animadversion, or otherwise he would never have become such. He presumes his Arguments irrefragable, and then an Answer does him no mischief; and if they are otherwise, he deserves it. And surely he stands as liable to be corrected by others, as others were to be censured by him. And it is more warrantable certainly to Write and Print for the Vindication of former Proceedings, than it can be either candid or gentile to arraign or expose them; especially since to do so, is and must needs be mischievous to past, present, and future Governments, as Experience will unquestionably teach us; but the other is, and will be of service to future Administrations, by maintaining the Reputation and Credit of Judiciary Proceedings.

It is well known, that the Lord Russel *being so unfortunate as to fall under the Accusation of Treason, was the most pitied of any under those Circumstances, by all who knew either his Family, or personal Character; great expectations were then had of the issue of that Trial, the event gave great occasion for Discourse afterwards, and almost ever since; the Printing of his last Speech, with the several Answers to it, did much augment the talk. It cannot but be remembred how various and different the Sentiments of most were upon that subject; the Debates concerning it, generally concluded in a pity to his Person and Relations, as a great Misfortune upon both, and in truth, upon the Nation, that a Gentleman of such Qualifications should be guilty of so much Inadvertency (to say no worse) as to ingage so frequently in such Consults as he unhappily did. Some blamed the Jury, most censured the Witnesses, but very few arraigned either Council or Court: and in truth, the fairness and indifferency of that Trial was such, that his own Relations were pleased, and his Enemies angry with those that then sate upon the Bench; and thus it continued till the present Revolution.*

I think it is not warrantable to Write or Print for the vindication of former Proceedings, if by those Proceedings are meant the Proceedings against the Lord *Russel*, Colonel *Sydney*, Mr. *Cornish*, and several others; and I think it is not only candid

candid and gentile, but the Duty of every Subject who knows them to be illegal (as I do) to arraign and expoſe them, and the rather, becauſe tho it may be miſchievous to the paſt, yet I am ſure it is beneficial to the preſent and future Governments; as Experience hath and will unqueſtionably teach us; and I am well ſatisfied that the diſcrediting the Judiciary Proceedings of thoſe Times will be a ſervice to future Adminiſtrations; for we well know that illegal Preſidents which have paſt *ſub ſilentio*, have by length of time gained Credit. The Lord *Ruſſell* was indeed unfortunate to have lived in thoſe times, when he thought it was his Duty to be active for the Proteſtant Religion, Liberty and Property, and every knowing Man was ſenſible that at that time it was impoſſible for him to eſcape an Accuſation of Treaſon, and being acccuſed, to eſcape a Condemnation for that pretended Crime. The honeſt, but ignorant in the Proceedings of thoſe times had indeed great expectations of the iſſue of his Trial, but the *Tories* as well as honeſt Lawyers, who knew the Proceedings of thoſe times, which the Author of the Sheet would vindicate, made no doubt but he was a dead Man, from the time he was ſeized. After his Speech came out there were no various Sentiments of the ſubject, all agreed he was Innocent, none pitied him; for that which was before pity in the honeſt, was turned into anger; and all the reſt were enraged to find a Man reproach his Enemies in his Grave: and therefore I cannot but remember ſome paſſages of two Books; the one called, *The Antidote againſt Poiſon*, wherein the Author chargeth the Paper, called *The Lord* Ruſſel's *Speech*, That the Reader would not find the Ingenuity, Sincerity, or plain Stile of a dying Gentleman in it, but the Dialect of an Artiſt, uſed to ſhadow Truth with ambiguous Expreſſions; and handles it as if he were to take Exceptions to an Anſwer in *Chancery*: 'tis true, he pretends the Speech was compoſed by another Perſon, and not his Lordſhip; but ſince his Lordſhip owned it to be his, it was the ſame thing as if he had compoſed it himſelf: and that Book chargeth his Lordſhip with Folly and Falſhood at the ſame time. The other called, *Succinct Remarks on the Speech of the late Lord* Ruſſel, wherein the Author treats his Lordſhip as one of the Modern Traitors, and challenges all the Jeſuites in *Europe*, to ſtuff a Speech with ſuch Equivocations as the Proteſtant Jeſuit, the Lord *Ruſſel* had his; and Jeſuit, Traitor and Hippocrite, *Coventry-blew*, Proteſtant-Lord, and the like, was the Dialect of that Pamphlet.

Beſides *Jack Ketch*'s Vindication for giving ſo many ſtrokes, which it was plain the Duke of *Monmouth*, as well as other Perſons, thought was done by deſign; and therefore warned *Ketch* not to give him ſo many blows as he did the Lord *Ruſſel*; but he fared never the better for the warning: So that he is not lamented by all, as is perſuaded.

How

How far the noble Lord engaged in Company, where ſome matters, as he ſaid, were diſcourſed with more heat than prudence, I know not; (the word the Authour gives them of Conſults, he borrows from the Popiſh Plot, and this pretended Plot was to ape that;) few or none blamed the Jury, but all honeſt Men arraigned both the Counſel and Court, as in truth they had reaſon, the Unfairneſs and Partiality of that Tryall was ſuch, that his Enemies laughed to conſider what Tools they had made of ſome who ſate on the Bench, to bring about what they had ſo long deſired, and reſolved to effect; but if his own Relations were pleaſed, I am ſure it is to be imputed to their ill Nature, or Ignorance, if the Lord *Ruſſel* was ſuch a Perſon in his Qualifications, as the World and the Authour repreſent him to have been; (as for my ſelf, I neither knew him, nor was known to him, nor knew, or was known to his Relations, ſo much as by ſight; their Fortunes perhaps carried them above the neceſſity of ſtudying the Law, and their Buſineſs would not permit them leiſure to read the Prints of the Tryalls, uſually ſold about Streets in thoſe times; but if they had known, or been but credibly informed how different the Carriage of the Court and Counſel was in the Lord *Ruſſel*'s Tryall, from what it was in other Tryalls; how different the Reſolution of the Court and Counſel in points of Law, in order to bring the great End about; how very partial they had been in giving, and permitting Evidence to be given by Hearſay againſt the Priſoner, which they would not permit to be given in his Defence; and if they had been convinced of the Truths of all herein beforeſaid by *J. S.* in relation to the Lord *Ruſſel*'s Tryall, I am ſure it was not poſſible for them to avoid one of the above Cenſures, if they had been, or yet are pleaſed with his Tryall.

It could not be for the ſake of the Government; for it can never be deemed a politick Service to rake into old Sores, when lenifying and moderate methods are more adviſable; and if every thing ſhould be republiſhed which hath given diſguſt to the People, few would eſcape the laſh; the righteous themſelves would ſcarcely be ſaved; for abundance of them have tript, either in their publick or private converſation, and ſome in both, and that notoriouſly too: I name no body. Beſides, the Government muſt of neceſſity never allow the Doctrines divulged in this Pamphlet, unleſs 'tis intended that its Being and Continuance ſhall be as precarious as a Beneplacito *Judgſhip, and as dependent upon the People's Humour, as that is upon the King's: Nor can any Government countenance and encourage the Arraignment of a conſiderable number of wealthy and worthy Citizens, with the printed Cenſure and Inſinuation of their being a parcel of corrupt, ignorant, injudicious, diſhoneſt, and partial Fellows, and this is done to the full, when ſaid, that the contrary would have ſworn to a* Not guilty, *or at leaſtwiſe they ſhould*

if the Auuhour had been there. But moſt of his Readers are of another opinion, notwithſtanding the ſecond Letter, pag. 7.

If Bodies Politick are like Natural Bodies, as ſome have ſaid, it is fit to ſearch the bottom of the Sores, before the Medicine be applied to it, for Lenitives are not proper for all Sores; it makes ſome worſe; whilſt they make a ſeeming Cure, they at laſt break out into dangerous Impoſthumations, and for ſome Sores Corroſives are the beſt Medicines: Private Converſations do not diſguſt the People; it is the publick Enquiries, and of thoſe the bloudy ones do moſt diſtaſte them, and of thoſe none more than the Execution of the Lord *Ruſſel*, who they upon juſt Reaſon thought dyed a Martyr for the Proteſtant Religion, their Liberties and Properties, and in gratitude mourned for him whilſt alive, and require an account of his Death of thoſe who brought him to the Block. I am ſure all Governments, which do not depend on the Peoples Good-will, muſt be as precarious as a *Beneplacito* Judgſhip, and be held by a force which a Prince can never be ſure of, of which we have had a late Example; and I am ſure thoſe who think they are injured in themſelves, in their Relations, or in their Fears; what inflicted on thoſe that ſuffered, being juſtly feared by all the honeſt men, who by Friends or Rewards eſcaped, are as yet unſatisfied, and which are the greater number, the late Revolution plainly ſhewed; and whether it is better to gratifie thoſe who are proud of the Spoils of their Neighbours, and confident enough yet to bid them defiance, and threaten to act the ſame things over again, aſſoon as they arrive at Power enough ſo to doe; or elſe to doe right to the Injured, who are by much the majority, I leave to better Judgments to determine.

I am not for arraigning the wealthy, worthy, or any Citizens, as the Authour doth, *p.* 2. but for placing the Saddle on the right Horſes backs, the Judges and Counſel, whom the Authour in the ſame page endeavours to excuſe; It is true, it is cunning in them to inſinuate Fears in all to gain a Party, that at leaſt number may defend them; but enquire narrowly into the matter, the number of thoſe who have done thoſe Wrongs and Miſchiefs which the Nation is ſenſible of, as were never acted amongſt any People in ſo ſhort a time, are very inconſiderable; and truly, I think it were well if ſome perſon, to make the Government ſenſible of their weakneſs, would ſingle them out. A. B. *Bancroft* could never make K. *James* I. ſenſible of the inconſiderableneſs of the puritanical Party, as they were then called, who boaſted themſelves to be the majority of the Nation, till he gave the King a Liſt of their Names, and the number of their Heads; which being few, the Party became after deſpicable.

Was it a Secret to the World, that a variance between the Indictment and the Evidence might be alleadged on the general Iſſue? Did no Man in Town know that Treaſon, and the Miſpriſion of it, are

are different Crimes? Is the diſtinction between them ſuch a new invention, and ſo very uſefull, as to be an equivalent for the want of Counſel in capital Tryalls? as the Preface and Letter do inſinuate, if they doe any thing. Who ever doubted, but that proofs of Treaſon muſt not be by hear-ſay or argument only? Was it ever a queſtion for this hundred years, but that every Indictment of Treaſon muſt contain an Overt-act? Or that leſs than two Witneſſes was allowable for proof of that Crime? Or did any Man ever ſcruple but that Keble's *Statute-Book contains a true Copy of the* 13 Car. 2. cap. 1. *which requires Witneſſes credible? Now if theſe Queſtions muſt be anſwered in the Negative, how can the advice of theſe Letters be aſſiſtent to a better Defence, than was known long ſince?*

It was not a ſecret to the knowing part of the World, that variance between the Indictment and the Evidence might be alleadged on the general Iſſue; nor that Treaſon and Miſpriſion of it were different Crimes; nor that proofs of Treaſon muſt not be by hear-ſay, or argument only; or that leſs than two Witneſſes were not allowable for proof of that Crime; but the contrary of thoſe were ſo frequently practiſed and impoſed on the Juries, unknowing in the Law, by perſons whoſe Characters imported Integrity and Knowledge, though their Practice contradicted their Characters, that it was fit to let the World know what the Law was in vindication of it. I am ſure it is very fit for the Liberty of the Subject to have the Law eſtabliſhed certain, and thoſe who are againſt it, and would have it as arbitrary as in the late time it was, doe it with a deſign to have the preſent Government as odious as the former, and then they know, by the late Example, that it will be as eaſily ſubverted; but if Conſpiracies to levy War are not Capital crimes, are they therefore unpuniſhable? Surely they are not. It is true according to the Doctrine of the late times, nothing but hanging and quartering, or tantamount, was thought a puniſhment. There are ſuch things as Fines and Impriſonments, which are pretty ſevere puniſhments; and upon occaſion, there is a power in the Legiſlative Authority to make ſuch Crimes capital, even after they are committed, but that Authority did not think fit to veſt ſuch a power in the ordinary Courts of Juſtice.

The Aſſertions are two, that there was neither Charge nor Proof, that the Indictment and Evidence were both inſufficient.

I muſt confeſs, that it would be a mighty Addition to the Liberty of the Subject, to have the Law eſtabliſhed, and declared to be what the late Judge doth argue it is; for then there would be a freedom for Malecontents to endeavour their own ſatisfaction by Conſpiracies and Conſults, and that with impunity. But as the Law was, and always hath been taken to be, an Engliſh Subject hath very little colour for his pretence to ſuch a privilege as that Doctrine gives.

The

The Indictment is, That at such a place and time he did compass and imagine not only to deprive the K. of his Government and Royal State, but to kill and put him to death, and to procure a miserable slaughter among the K's Subjects, and to subvert the Government of *Engl.* and to raise a Rebellion against the K. *Then follows,* That to fulfill and perfect these Treasons, and traiterous Imaginations, he, together with other Traitors, did then and there with them traitorously consult, conspire, conclude, and agree to raise a Rebellion, and to seise and destroy the Guards of the K's Person, *contra, &c. Now whether these last acts be not a natural and genuine Evidence of the former, let any rational man judge: But I will particularly prove, that this Indictment was sufficient to warrant the Judgment which the Court gave and pronounced upon a Verdict, that the accused was guilty of that Fact in the Indictment, and then answer the Objections.*

1. *There is a sufficient Treason alledged.* 2. *Here's a sufficient Overt-act; both these I'll agree are necessary, and if either were wanting, the Indictment was naught. Now it must be agreed to me, that the first is clear and plain; for by the Law to compass or imagine the death of the K. Q. or their eldest Son, is high Treason. It is true by the same Law some open act, of which humane Justice can take a Connusance, is requisite to be proved; the very words of the Statute do expressly require it; and in truth it is no more than what must have been, had no such words been used; for thoughts are secret, and can never be arraigned, proved, or censured any otherwise than as they are discovered by some Overt-act; so that that Clause requiring an appearance of the Compassing and Imagination by some Overt-act, or open Deed, is no more than would have been impliedly requisite, had the Clause been omitted. 'Tis the Imagination and Compassing which is the Treason, that alone is the* Crimen læsæ Majestatis, *which is prohibited and condemned; the Overt-act is not the Treason, that's only a necessary circumstance, without which no Court can ever take connusance of the other. And it is necessary to alledge some such deed,* a necessitate rei, *without respect to the words of that Statute. I insist the longer upon this, because it is used as an Objection, that the Clause of* provably attaint by, *&c. is restrictive, whereas it is not so; for it is only to make that first specified Treason of Imagination and Compassing to be a thing intelligible and triable; and farther to prove this, it is considerable, that this Requisite of the Overt-act is of use and necessity barely, and only in the case of that which is first mentioned,* viz. Compassing; *for the other sorts of Treason are Acts themselves, whereof notice may be had, as levying War, violating the Q's Bed, and the like; and in an Indictment you need only alledge the Facts themselves, as that there was a War levied, there was a carnal knowledge had, and the like. And this farther appears from the very form of Indictments used ever since that Statute; for there never was an Indictment (and if there were, it could never*

ver be good) *barely averring an Overt-act without an expreſs allegation of the Compaſſing.*

Then the Matter reſults ſolely into this Queſtion, Whether the Fact here laid be naturally and neceſſarily declaratory of the Parties Imagination to deſtroy the King; for if ſo, the Indictment is undoubtedly good; and it can never be called a conſtructive Treaſon, or a Thing deviſed by the Judges Interpretation of the Statute; for they adjudg no more Treaſon than what the Statute declares, and that is an imagination of the King's Death; now whatſoever is ſignicative of a man's Intention or Imagination, is a ſufficient Overt-deed to demonſtrate, that that Man had ſuch an Intention or Imagination; and whatſoever is expreſſive or ſignificative of a Man's intending, compaſſing, or imagining of the King's Death, is a ſufficient Overt-act to prove and make ſuch a Man a Traitor within this Law. Now that a Conſult about, and an Agreement and Concluſion actually to ſeize the King's Guards, and raiſe a Rebellion, are a natural and genuine declaration, that the perſon who did ſo conſult, agree, and conclude, did compaſs and imagine the Death of the King, is ſurely plain enough; for a Rebellion, if ſucceſsfull, can determine in nothing elſe but the King's Death, either Natural or Civil, which is all one within this Law; now he that deſigns and intends the neceſſary means naturally conducing to a particular end, that Man may certainly be ſaid to intend and deſign that end. Cauſa cauſæ eſt cauſa cauſati. *If the Deed tend and conduce to the Execution of the Treaſon, that's a ſufficient Overt-act, ſays* Coke, 3 Inſt. 12. *and in the ſame Book,* fol. 6. *he hath theſe words,* That he who declareth by Overt-act to depoſe the King, is a ſufficient Overt-act to prove that he compaſſeth and imagineth the Death of the King; *and ſo it is to imprison the King, to get him into his Power, and to manifeſt the ſame by ſome Overt-act; this is alſo a ſufficient Overt-act for the Intent aforeſaid.*

Having trackt the Authour thus far to very little purpoſe, ſtill expecting what he would ſay in Juſtification of the Engliſh Method of Proceedings againſt Criminals, particularly againſt the Lord *Ruſſell*, with which I can by no means be reconciled. I was a little ſurpriſed to find him begin with a Juſtification of the Indictment; I expected he ſhould have ſaid ſomething to juſtifie the clapping that Lord up cloſe Priſoner, without letting him know why or wherefore; the bringing him to his Tryall aſſoon as he was indicted, not giving him the reſpite of an hour to prepare himſelf for his Defence; and have ſhewn a Reaſon why no Freehold was no Challenge to a Juror in his Caſe, which was allowed to be a good challenge in *Fitzharris* his Caſe; have ſhewn a reaſon why hear-ſay was not as good Evidence for the Priſoner as it was againſt him; and why the Court permitted hear-ſay to be given in Evidence againſt him, and would not permit it to be given in Evidence for him; theſe, and twenty other things complained of in that Tryall. By the Title of the Paper one would have expected that the Authour would have vindicated the manner of proceedings, rather than the opinion of the Judges conſtruing ſuch

or ſuch Facts to be ſuch or ſuch Crimes: But ſince the Authour, as he had reaſon, hath thought fit to paſs by all the irregularities of the Tryall, and ties himſelf up only to prove the Indictment good and legal, and the reſolution of the Judges to be Law; I ſhall therefore only ſpeak as to thoſe two matters.

The Indictment was for compaſſing and imagining the death of the King, and conſpiring to levy War, which was compaſſing and imagining the Death of the King, and as an Overt-act they conſulted and agreed to raiſe a Rebellion, and to ſeize and deſtroy the Guards of the King's perſon: That there is a ſufficient Treaſon alleadged in the Indictment, I agree; but that there is a ſufficient Overt-act of the Treaſon alleadged, I deny: For though the death of the King is ſometimes a conſequent of a Rebellion, yet it is not always, much leſs is it a conſequence of a Conſult, Agreement, or Concluſion to raiſe a Rebellion; and to ſay truth, it is ridiculous to ſay that a Conſpiracy to doe one thing, is an Overt-act of a Conſpiracy to doe another; and the Authour himſelf, in effect, owns it to be true, when he ſays an Overt-act muſt be ſomething done, but if an Agreement to raiſe Rebellion, and ſeize the Guards, ſhould be called ſomething done; yet it not being a neceſſary declaration of the parties imagination to deſtroy the King, as it is not, it is not an Overt-act of that Treaſon. The truth is, the Authour in this matter uſes abundance of words to the ſame ſenſe, which at the firſt ſight looks like arguing, but if conſidered have nothing of reaſoning in them: He ſays it is a natural, genuine, neceſſary, Declaration, *&c.* but gives no colour of Reaſon, more than abundance of words, to prove the conſequence; but becauſe I would put the Authour in the right way of reaſoning this matter, in which there is nothing of Law, but common ſenſe, and of which every man of equal natural Parts is as good a Judge as the beſt Lawyer. I ſay, there are two ſorts of Overt-acts of a Man's Intentions; ſome prove themſelves, and are direct Evidence of the Intention; as for Example: if a man cuts another's Throat, though that other doth not dye of the Wound, yet it is an Overt-act of an Intention to kill him, ſome are Overt-acts and not direct Evidences of the Intention; but the Intention, as well as the Overt-act, muſt be proved; as if a Man ſhould be hid in a place where the King uſually comes, armed with unuſual Weapons, this is a good Overt-act in the Indictment, and good Evidence on the Tryall, if the Priſoner can give no good account of his being ſo lurking, and ſo armed. And though I will not ſay that theſe are all the ſorts of Overt-acts that may be laid in an Indictment, yet at leaſt I ſhew the Authour, that Overt-acts are capable of a Reaſon, and ſince he hath offered none for his Overt-acts, I ſuſpect he could give none; but if a Conſpiracy to ſeize the Guards be an Overt-act of compaſſing, *&c.* I pray what were thoſe guilty of who ſaid the Guards were illegal, when there was no apparent cauſe for keeping them on foot? Was not the ſuppreſſing them a pretty genuine conſequence of ſuch an Opinion? and then you know, *Cauſa*

ſa cauſæ eſt cauſa cauſati; and ſo it follows as naturally as the Soldiers Poſture did on the Beat of Drum.

In 3 Inſt. *p.* 12. *'tis held, that a* Preparation *by ſome Overt-act to depoſe the King, or take the King by force and ſtrong hand, or to impriſon him till he hath yielded to certain Demands; this is a ſufficient Overt-act to prove the compaſſing and imagination of the King's Death; for that this, upon the matter, is to make the King a Subject, and to deſpoil him of his Regal Office; and ſo he ſays it was reſolved by all the Judges of* England, Hill. 1 Jac. 1. *in the Caſe of the Lord* Cobham, *Lord* Gray, Watſon *and* Clark, *Seminary Prieſts; and ſo he tells us in the ſame place, that it had been reſolved by the Juſtices in the Caſe of the Earls of* E. *and* S. *Now if we conſider the reaſon why theſe are Overt-acts of Treaſon, 'twill appear to be only becauſe of their natural tendency to the accompliſhment of that particular Treaſon of compaſſing, which holds the ſame in the Authour's Caſe as well as in thoſe there mentioned.*

A Conſpiracy with a foreign Prince is agreed by my Lord Coke, ib. 14. *to be Treaſon, if it be to invade the Realm; and an Overt-act of ſuch practice to be a ſufficient Overt-act of a compaſſing the King's Death; and the reaſon is, becauſe ſuch actions cannot be thought to be intended for any other purpoſe; and yet that particular Act may be accompliſhed, and it may ſo happen, as that the King's Death may not follow, and yet they are Overt-acts of that treaſonable Imagination, becauſe of their conduciveneſs and tendency thereto. The Caſe of Cardinal* Poole *was, writing a Book of the Pope's Supremacy, in which were contained Incitements of* Charles *the Emperour to an Invaſion of this Realm; and that was held an Overt-act of imagining the King's Death. In the Lord* Cobham's *and Sir* Walter Rawleigh's *Caſe, a Conſpiracy, Conſult, and Agreement to promote an Inſurrection and procure an Invaſion, was held an Overt-act,* 1 Jac. 1. *and their meeting, conſulting, and agreeing, was laid as an Overt-act, though diſcovered before the thing took effect. Dr.* Story's *Caſe, which is mentioned by the Lords* Dyer *and* Coke, *was no more than a Practice and Perſuaſion to promote an Inſurrection and Invaſion, and the Overt-act that was alleadged was the writing of Letters for that purpoſe; which is no more influential towards it, nor ſo much, as frequently meeting, conſulting and conſpiring, and at laſt concluding and agreeing to make an Inſurrection. The Caſe of Mr.* Coleman *was no other; for whatſoever the Indictment laid, the Evidence was only of Letters to the like effect (as to this point) with thoſe of Dr.* Story; *and that Caſe of Dr.* Story *was before the* 13 Eliz. *which made a new Treaſon during her Life; for the Tryall was in* Hillary *Term, and the Parliament did not begin till* April *following. A Machination or Agreement to raiſe a Rebellion naturally tends to the Deſtruction both of King and People; and an Advice to it hath been adjudged ſo: as in the Reign of* Hen. 4. *one* Balſhal *going from* London, *found one* Bernard *at Plow in the Pariſh of* Ofley *in the County of* Hartford, Balſhal *told him that King* Ric. 2. *was alive in* Scotland, (*which was falſe, for he was then dead,*) *and adviſed him to get Men, and go to King* Richard;

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in Mich. 3. Hen. 4. Rot. 4. *you'll find this adjudged Treaſon.* Throgmorton's *Caſe is as plain; for his was only a Conſpiracy to levy War within this Realm, he did not joyn in the Execution; and the Conſpiracy alone was declared to be a ſufficient Overt-act by the Judges: 'Tis no Anſwer to it, to ſay that a War was afterwards levied, for* quoad *him 'twas a bare Conſult; his Offence was no more than that. In Sir* Henry Vane's *Caſe, meeting and conſulting were alleadged and held to be Overt-acts. The Caſe of* Conſtable *mentioned in* Calvin's *Caſe, was only an Act tending to depoſing the Queen, as diſperſing Bills in the Night, that* Edw. 6. *was alive in* France; *and held an Overt-act declarative of his compaſſing her Death, and he was executed for it: and in the Report of* Calvin's *Caſe you have ſeveral other Caſes mentioned, where endeavours to withdraw Subjects from their Allegiance, have been adjudged Overt-acts of this ſpecies of Treaſon, the compaſſing,* &c.

The word Compaſs in the Statute is of a larger extent than only to mean an actual Aſſault on the King's Perſon, and an endeavour to cut his Throat; it moſt certainly implies any conſult or practice of another thing directly which may produce that effect, as diſſuading people from their Fidelity: ſuch was Owen's *Caſe in K.* James 1*ſt's time, in the* 13*th year of that Reign: his Advice was to this effect, That King* James *being excommunicated by the Pope, might be killed by any man, and that ſo to doe was no Murther; for being convicted by the Pope's Sentence, he might be ſlaughtered without a fault, as an Executioner hangs a Criminal condemned by Law: and for this he was hang'd as a Traitor. He that denies the Title to the Crown, and endeavours to ſet it upon another's Head, may doe this without a direct and immediate deſiring the Death of him that wears it; (ſo ſaid* Saint-John *in his Argument againſt the Earl of* Strafford,) *and yet this is Treaſon, as was adjudged in the Caſe of* Burton, *and in the Duke of* Norfolk's *Caſe,* 13 Eliz. *This denying of the Title with Motives, though but impliedly of Action againſt it, hath been adjudged an Overt-act of compaſſing the King's Death, as it was in* John Sparhawk's *Caſe,* Paſch. 3 Hen. 4. Rot. 12. *The like was the Caſe of* John Awater, *who was indicted for a Treaſon of that ture in* Kent, *and the Indictment removed into* B. R. Trin. 18 *Ed.* 4. *ſee* Rot. 17. *and he was thereupon afterwards outlawed as a Traitour; and ſo was* Thomas Heber *at the ſame time; and words ſignificative of an actual intention have been held ſo, as are the opinions in* Yelver. 107. 197. Arthur Crohagan's *Caſe,* Cro. Car. 332. *and abundance of others might be named, as they are reported in our Law Books, but I do not particularly mention them, for that their Authority in ſome of them is very ſlender, and may be ill uſed to the ſtraining of raſh and unadviſed Words into a ſignification of a man's compaſſing, when perhaps the man never thought as he ſpoke: however, all of them do evince, that adviſed and deliberate Preparations, moving to a danger to the King's Perſon, have all along been held Overt-acts of a compaſſing his Death; and ſome of them prove, that Preparatives and Motives to the levying of a War,*

a War, have been held Treaſon, as was Sir William Aſhton *of* Suffolk, 31 Hen. 6. *mentioned in* Cro. Car. 119. *for making Ballads reflecting upon the King, and writing Letters to the Men of* Kent, *exciting them to riſe to aid the then Duke of* York, &c. ad guerram levandam; *and no mention of any War actually levied.* Germain *and* Taylor's *Indictment hath very little more in it mentioned than the like Preparations and Incitements to a Rebellion; and yet the Treaſon there laid was a compaſſing the King's Death,* anno 2 Edw. 4. *as at large appears in the ſame Report of* Cro. Car. *amounts to no more than the Indictment in queſtion;* viz. *That he compaſſed the King's Death; and to accompliſh that Intention, he diſperſed divers Writings,* &c. ad intentionem *that the People ſhould riſe, and levy War,* &c. *the Judgment in that Caſe, Drawing, Hanging, and Quartering: the like is* Collingbourn's *Caſe,* 2 Rich. 3. *in the ſame Rep.* 122, *where he is indicted in like manner, for exciting and moving the People to an Inſurrection and War, and he incurred the like Judgment; which Caſes are infinitely ſhort of this in queſtion: and it cannot but be wondred that any man who has read them ſhould queſtion whether a conſulting and conſpiring about riſing, and an actual agreement and determination to riſe, be an Overt-act of compaſſing the King's Death. In the very Tryall of the Lord* Stafford *it is affirmed by Sir* William Jones (*who was certainly of great Authority with the Authour*) *that the meeting and conſulting together is an Overt-act, though the thing agreed on be never put in Execution; and 'tis there reſolved by the Judges, that the ſame Treaſon may be proved by two Witneſſes to ſeveral Overt-acts, though one ſpeak of Words or Actions that were ſpoken or done at one time and place, and another ſpeak of Words or Actions at another time and place; which argues that Words, much more a Conſult and Agreement, may make an Overt-act. Even in the Caſe of* Stephen Colledge, *in which though the Tryall hath been cenſured, yet the Indictment never was, and in that Indictment the Treaſon is laid as in this Caſe, That he traiterouſly imagined and compaſſed the King to Depoſe, Kill and Deſtroy; the Over-acts are, That he armed himſelf, and adviſed others to arm, and ſpoke ſeveral Words,* &c. *Here was no War levied, only a Preparation, and yet that was allowed an Overt-act: and as for the Words, if they are allowed to be one, with much more reaſon may Meeting, Conſulting, and Agreeing to doe.*

As to the Objections; ſurely there is no weight in the firſt, which is Page 10. *that criticiſes upon the Word* fait *Act, and that 'tis only a meeting to agree, and an agreement to do, but 'twas not done: Suppoſe they had concluded and agreed to poiſon or ſtab,* &c. *according to the opinion in that Page, this was no Treaſon; for 'tis only agreeing and concluding upon a thing to be done, but it is not done. He doth in p.* 13. *argue, that this can never be an Overt-act of compaſſing the King's Death, becauſe levying War is a diſtinct ſpecies of Treaſon, and a conſpiring to levy War is not a levying War, and even levying War it ſelf cann't be aſſign'd as an Overt-act of compaſſing, unleſs the Indictment were particularly for that: but ſurely another ſort of Act, that ſavours of another*

ſpecies of Treaſon, if it naturally conduce to the accompliſhing of the firſt ſpecies, viz. *that of compaſſing, it may be aſſign'd as an Overt-act of it; and Sir* H. Vane's *Caſe is quite otherwiſe, and there a levying War was the Overt-act alleadged of the compaſſing, and allowed by all the Judges; and all the Indictments in the* Weſt *upon* Monmouth's *Rebellion were ſo, and yet drawn by very good Advice; beſides, what Anſwer can be given to the Caſes I have cited, where Conſults, Conſpiracies, Practices, Advices, Letters, Perſuaſions, and other Motives and Preparatives to an Inſurrection, have been held Overt-acts of an Imagination of the K's Death, tho' no War was levied, no Inſurrection had.*

*'Tis apparent from what has been ſaid before, that to take the K. Priſoner, or to ſeize his Perſon, is a compaſſing of his Death; and if ſo, then to ſit in Council to conſpire the effecting of that, is an Overt-act of compaſſing the K's Death; and this Caſe amounts to that, here was a Conſultation to ſeize upon the K's Guards, which could tend to nothing but the ſeizing of his Perſon; and then the conſequence is plain. The Author ſays, p.*14. *If it had but been alleadged in the Indictment, that in purſuance of the Conſult and Agreement, there had been a view of the Guards, and a Report made, that the thing was fecible, this would have been more to the purpoſe, how much more no man can tell; for every Objection in the Book would have been as good againſt that as this. The great Objection he ſeems to rely on, is, That the Law takes no notice of them: for once I will ſuppoſe that it doth not, and then let us obſerve if any Argument can be drawn from thence: Perhaps the thing was not uſed or known when the* 23 Ed. 3. *was made. Can nothing be Treaſon if the Plot laid to accompliſh it be concerning a thing not in* eſſe *at the time of the Stat. Certainly it may. If ſeveral Malecontents ſhould conſult, and agree, and prepare (in order to an Inſurrection) to ſeize the* Tower, Portſmouth, Hull, *and* Plymouth *Fort, would not this be an Overt-act of Treaſon? and yet our Law takes no notice of any Garriſons there or any where elſe; they have no Relation to the Militia, nor were there any Arms in thoſe places in* Ed. 3. *his time, that we read of in our Law-Books; if this be otherwiſe, why did not the Author find fault with* Rouſe's *Indictment, which was tried much at the ſame time with this in queſtion. Suppoſe all the Gentlemen-Penſioners, Grooms of the Stole, Gentlemen of the Bed-chamber, and the like, killed in the Night, and the doors in* Whitehall *broken up, and all the Swords, Muſquets, and Piſtols there taken away, and yet it happened that the K's Perſon was left untouch'd; would this be an Act of Burglary and Murther only? We have no Law Books that take notice of Arms at* Whitehall, *or ſuch Names as thoſe Servants go by: and ſuppoſe, at the ſame time, upon the Conſult, that the Conſpirators did move, diſcourſe, debate, and conclude of an Inſurrection, would it not then be Treaſon? If not, nothing can be ſo, unleſs the K's Perſon be murthered or ſeized; and the St. ſhould not have ſaid compaſs or imagine, but ſeize or kill,* &c. *It ſuffices then, that the Guards are in common underſtanding known to be uſed and imployed for the Attendance upon and Preſervation of his Perſon. If common Senſe and Reaſon be judge, no man can think but that he who intended to move an Inſurrection, and ſeize the Guards, had a farther deſign upon the K's Perſon; and then 'tis Treaſon:*

If

If otherwise, a King of England *is in a worse Condition than the worst and meaneſt of his Subjects; for a King muſt not, cannot in or by our Law, aſſault, ſtrike, ſeize, attach, or impriſon in Perſon, and conſequently cannot defend himſelf; and ſhall not his Servants, Guards and Attendants (which are all of the ſame nature) wear a Sword, or carry a Muſquet before him? If they do ſo, is it not then known that they doe it? if it be commonly known to be ſo, doth not he that ſeizes and deſtroys thoſe Attendants, endanger the K's Perſon? and if that be ſo, the Inference is eaſie. It can never be, it will never be allowed for Law, that a ſeizing all the K's Guards is only a breach of the Peace, unleſs we renounce the Law, and will judge more by Inclinations and Partiſhips than by Reaſon and Precedents. As to the diſtinction between an actual ſeizing them, and a Conſult and Agreement to ſeize them, what I have urged before overthrows it; and what the Author ſays doth no maintain it, for both have a tendency to the execution of the Treaſon intended.*

I will not take the pains to remark upon all the Inconſiſtencies of the Conceſſions and Denials in the Book, they are obvious to the Readers. As to his Quarrel at the K's Guards as an illegal thing and terrible to the People, ſomewhat of the French *growth, I hope the K. will always preſerve them for his own perſonal Preſervation, notwithſtanding the Author's Opinion. As to his temporary Laws which declare Words Treaſon, moſt part of them were affirmative of the old Law, and were made only in compliment to a new crowned Head, when they prohibited nothing but what was before ſo: and for the reſt, no Concluſion could be made from them for the maintenance of his Aſſertion if he had repeated them; which ſince he does not, nor will I.*

As to the Caſes cited by the Author of the Antidote (which I have mentioned,) he agrees to Conſtable's *Caſe, but does not diſtinguiſh it in its reaſon, from that in diſpute. He denies the Authority and Law of* Dr. Story's *Caſe, which no body ever denied before him. He ſays that in the Lord* Cobham's *Caſe there were People aſſembled, but gives not any Anſwer to what the Antidote affirmed,* viz. *that the Overt-act taken notice of in the little Book called,* The Pleas of the Crown, *was only the conſpiring to make an Inſurrection. He doth confeſs, that in the Lord* Gray's *Caſe, there was only a Conſpiracy: He ſays, that in Sir* H. Vane's *and* Plunket's *Caſe there were ſeveral other Ingredients to mount them to Treaſon, but what they were no body muſt learn, at leaſt not from the Author, for he names none of them.*

He conſumes half a page in an Encomium *upon the Judiciouſneſs of that Court which made a conſcientious legal Scruple, whether the Murther of a Miſtreſs by her Servant were Petit Treaſon, by reaſon of the difference of her Gender? but at laſt he tells us, That the Judges of the Common Pleas did, upon much deliberation, ſatisfie thoſe of the King's Bench, that Maſter and Miſtreſs were in effect but one.*

The Indictment contained no new conſtructive Treaſon, but only that which was plainly and directly declared in and by 25 Edw. 3. *if the letters of it make words, and the word ſenſe, and one man may be allowed able to read them as well as another.*

Since the writing of the laſt Paragraph there came to my hands a-

nother

nother Pamphlet, written by a New Obſervator; but I ſuppoſe the Judges that ſhall be will correct that ſort of Licentiouſneſs which he aſſumes in his Remarks: which if they do not, they'll have fine eaſie Places on't, as well as their Predeceſſours, and much good may it doe them.

Ætas parentum pejor avis, tulit
Nos nequiores, mox daturos
Progeniem vitioſiorem. *Horat.*

The Truth is, the Indictment, though I think it was not good, yet it was the leaſt defective of any thing; in that whole proſecution the Evidence was the moſt defective, (which the Authour dares not bite at,) and yet the Authour doth not pretend it amounted to more than an intention to levy War, which is not Treaſon within the Statute of *Edw.* 3. he quotes indeed a great many Caſes to prove his *Theſis*, to every one of which ſomething ſhall be hereafter ſaid, only at preſent I cannot but wonder at the aſſurance of any man who pretends to underſtand the Law, when the Parliament, which is the ſupreme Court of Judicature in the Nation, hath ſo often adjudged, that it is not Treaſon within the Stat. of *Ed.* 3. that he ſhould think to confront and over-rule thoſe Judgments by Judgments given at *Weſtm.* or at the Aſſizes: Surely it is as ridiculous, as if in any Court at *Weſtm.* a Counſel ſhould think to over-rule a Judgment given there, by the Authority of a Judgment given in an inferiour Court by a Steward, or a Bailiff; that Perſon was excuſable, becauſe he did not, pretend to underſtand Law, who ſaid in Parliament, that if they did not doe him right there, he would not abide by it, but would bring the Matter into *Weſtminſter*-Hall. For is not the Stat. of *C.* 2. which makes a Conſpiracy to levy War during the King's life an expreſs Judgmt. of the Parliamt. that it was not Treaſon within the St. of *E.* 3. is not the St. of the 13. of the Q. which made it Treaſon during her Life; another expreſs Judgmt. in the ſame Caſe to the ſame purpoſe. And is not the Judgmt. of the Parliamt. as it is the ſupreme Court of the Nation, of more Authority than any Judgmt. in *Weſtm.* Hall, and much more than any Judgmt. at the Aſſizes or Seſſions. Beſides, conſider the Parliamt. which conſiſts of all the Nobility, aſſiſted with all the Judges, and of the beſt of the Gentry, and aſſiſted with Lawyers, and none can doubt which Judgmt. ought to carry moſt authority with it. Conſider the imputation which is laid on the St. of *E.* 3. by ſuch conſtruction a St. ſeemed to be penn'd with all Wiſdom and circumſpection imaginable, out of a ſenſe of what the Subjects had ſuffered by the uncertainty of the Law before, and which in all ages hath been applauded for the beſt penn'd Act to be found, and which in all ages hath been made the Standard of Treaſons; for when out of Flattery, or in compliance with the King, Treaſons have been multiplied, out of a ſenſe of the miſchief, they have afterward ſtill been reſtrained to the St. of *E.* 3. and yet by this conſtruction, that St. is made guilty of an abſurd tautologie; for if conſpiring to levy War be compaſſing the K's death, which by that St. was Treaſon, it was abſurd

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afterwards to ſay, that actual levying War, ſhould be Treaſon; becauſe a War cannot be actually levied, without a Conſpiracy to do it, though there might have been a Conſpiracy to levy War, and yet not afterwards actually levied: And the true Reaſon of the difference, is this: What tends to the miſchief of the King's Perſon, every one knows; but what is War, is not ſo certainly known. Thoſe who went to throw down Encloſures, did not think it to be levying War, though it were ſo; and it would be hard to make their conſulting to do it high Treaſon: I do not inſtance in this as a parallel Caſe with the matter in queſtion; but only to ſhew, that what is War, or not War, is not ſo eaſily known, as at firſt ſight apprehended; and the Makers of this Statute, who had ſmarted by pretence of levying War, were more ſtrict in penning the Clauſe of War, than they were in penning the Clauſe of Compaſſing, &c. In the time of *Henry* the Fourth, in the Earl of *Northamberland*'s Caſe, it was doubted, whether his riding armed with a Force, for a private Revenge, was not levying War? which was a Doubt ſo great, that it was reſolved in Parliament, to be only a Treſpaſs. And if what is War is ſo uncertain, the intention of levying it is more uncertain. Let any one but remember how narrowly *Blague* eſcap'd, but for talking of the feaſibleneſs of taking the Tower.

Now though I agree, That conſpiring to depoſe or impriſon the King, is high Treaſon, within the firſt branch of the Statute of *Edward* the Third, becauſe they deſtroy him in his politick Capacity; it is no manner of inference to ſay therefore, conſpiring to levy War is high Treaſon within that Statute; becauſe, if the Conſpiracy took effect, the Death, or Depoſing the King, doth not naturally, much leſs neceſſarily follow; nay, it very rarely hath ſo done: And let any one examine our Hiſtories, it will not be found to be a Conſequence once in forty times; whereas if a Conſpiracy to depoſe or impriſon the King, if it take its effect, he is actually depoſed or impriſoned. The firſt Conſpiracy is remote; the laſt is next the Depoſing; (a diſtinction of great uſe in our Law, and in Treaſon, as is to be ſeen in my Lord *Bacon*'s Elements;) much leſs doth it prove, that the Conſequence of a Deſign to ſeize the Guards, is to kill, depoſe, or impriſon the King: For time was, when the Kings of *England* were very ſafe, and at at full liberty without Guards; and, to ſay truth, no one inſtance, in our *Engliſh* Hiſtories, can be given, That a King hath been killed, depoſed, or impriſoned, for want of Guards. I know it hath been pretended, that King *Charles* the Firſt had not went from *White-hall*, if he had had Guards; but that is but a Conjecture: And it is a doubt, whether his departure was forcible, or voluntary. Guards may defend a Prince from a ſudden Attempt, (and ſcarcely ſo; for *Henry* the

Third, and *Henry* the Fourth of *France* were killed; the firſt in the midſt of his Army, the laſt in the midſt of his Guards) but not from the violence of the People; a Prince is ſafe in the love of his Subjects, and without it Guards are but of little uſe. There were two late Kngs, who did not well know whether they were not Priſoners to their own Armies; and *Mahomet* the Fourth, Emperour of the *Turks*, was a Priſoner for ſome time to his own Guards, when he thought himſelf at perfect liberty; ſo little difference there is between Guards for a Prince's ſafety, or his ſafe impriſonment. I purpoſely omit ſpeaking to the Caſes of the Lord *Cobham*, and *Gray*, *Watſon*, and *Clark*, becauſe I intend to anſwer them laſt of all, and for the ſame reaſon I ſpeak not of Sir *Walter Rawleigh*'s Caſe, becauſe it was the ſame with the other, though the Author cunningly Muſters them as diſtinct Caſes. The Caſe of the Earls of *E.* and of *S.* is reported ſhort by the Author; for their Indictment and Fact was for deſigning to take the Queen into their Cuſtody; and for that end aſſembled a multitude of armed Men, which is actual levying War, and ſo makes nothing towards proving the Matter in Queſtion, which is a Conſpiracy to levy War, without actual levying War. Cardinal *Poole*'s Caſe is to as little purpoſe; for in the Book that Cardinal *Poole* wrote, which was in the *27th.* of *Henry* VII. in which, as my Lord *Coke* ſays, 3 *Inſtit. fol.* 14. from whence the Author had the Caſe, there was this paſſage, *In Anglia nunc ſparſum eſt hoc ſemen, ut vix à Turcico internoſci queat, idque authoritate unius coaluit:* And in the precedent part of the Letter names the King; and though more Treaſons in the Indictment than one are mixt together, yet the Indictment did then, as it hath of late, conclude *contra formam Stat.* which may be interpreted, All, or any Statutes, precedent to that Fact enacting Treaſon: And if the Author will look back, he will find it enacted by the *26th.* of *Henry* VIII. *cap.* 13. That to publiſh that the King was an Heretick, Schiſmatick, or an Infidel, was High Treaſon; and I would fain know, whether the above paſſage, is not a good proof of publiſhing that the King was an Infidel, and ſo it was Treaſon within the above Statute: But nothing can be inferred from an Indictment never pleaded unto, as was *Poole*'s. The Caſe of Dr. *Story* is as little to the purpoſe, who, as *Cambden* ſays, was to have been charged with conſulting with one *Preſtall*, a Man addicted to Magical Illuſions againſt the Queen's Life, and always curſing her in his Graces, and for having conſpired the deſtruction of Her, and of the King of *Scots*, and ſhewed the Duke of *Alva*'s Secretary the way to invade *England*, to which Indictment he would not plead, and therefore was condemned: There is no doubt but the Indictment againſt *Story* was legal, and ſtanding mute, he was legally condemned; but whether

whether his accuſation was only perſwading the Duke of *Alva* to invade *England* does not appear; nay, the contrary appears by *Cambden*, and my Lord *Coke* quotes the Caſe, to prove *Story* being born a Subject, was not an Enemy, but a Traitor; beſides, it muſt be remembred, that at that time there were Acts of Hoſtility between the Queen and the Duke of *Alva*, and ſo *Story* may well be guilty of Treaſon, by the Clauſe in the *Stat. E.* 3. of adhering to the Queen's Enemies; and in the expoſition of that Clauſe doth my Lord *Coke* cite *Story*'s Caſe, as if he had been attainted on that Clauſe: And though the Author quotes my Lord *Dier*; yet the Caſe was put to the Judges, otherwiſe than the Author relates; for he ſays, If a Subject beyond Sea invite a Prince to invade the Realm, and no Invaſion follow, what Offence that is; and if the Practice be for the death of the Prince, what Offence this is; and how, and where it ſhall be tryed; and theſe Offences, ſays the Book, were held by the Juſtices to be High Treaſon; for that an Invaſion with great Power cannot be, but that it will tend to the deſtruction or peril of the Prince; but it is plain, that if the Judges did deliver that as the reaſon of their Judgment, they needed not have done it, for that *Story*'s Accuſation without that reaſon was High Treaſon, within the firſt Branch of the *Stat.* of *Ed.* 3. it being for compaſſing the Queen's Death, and was ſo put to the Judges: And it is plain, notwithſtanding the report of that Book, the Judges did not give that reaſon for their reſolution; or if they did, there was little credit given to it, for in *April* following, as the Author ſays, it was enacted, That the intention of levying War ſhould be High Treaſon, during the Queen's Life, which was very abſurd, if the opinion of the Judges was ſuch as reported; or if it were ſuch, and it were believed, it had been proper rather to have declared, That the intention of levying War was High Treaſon, within the firſt Branch of *Edward* III. And it is plain, If the Opinion of the Judges in *Story*'s Caſe was ſuch as reported, it gained no credit with my Lord *Coke*, who takes notice of that Caſe; and yet expreſly ſays, that a bare Conſpiracy to levy War is not Treaſon within the *Stat.* of *Ed.* 3. and takes notice of the 13*th.* of the Queen, which ſays he is Expired. The Caſe of *Coleman* is well remembred to be for Conſpiring to take away the King's Life by other ſort of ways than levying War; and to ſay Truth, there was ſuch Proofs and Suſpicions of the thing confirmed, by what after happened, that the Author, if but in tenderneſs to his Party, ought to have ſpared that Caſe. As for *Balſhall*'s Caſe, I did not think it worth my time to look the record of it; I find the Author hath it out of a Paper, called, *Animadverſions upon the Lord* Ruſſel's *Speech*; and that Author hath it out of Dr. *Nalſon*'s Collections; and to ſay Truth, the ſtyle of that and his

Paper

Paper are so alike, that they seem to be writ by the same Hand. I think the Author might have fitted himself with a Case out of *Baker*'s Chronicle, as much to the purpose, and of as good Authority as this, where one *Walker* said, He would make his Son Heir to the Crown, meaning his House, whose Sign was the Crown, and it was adjudged Treason, and *Walker* hang'd for it; a Case I as much believe to have happened, as the Author's. The truth is, the Case is not put like a Lawyer: If he had said, That the prittle prattle between *Balshall* and the Plowman, had been adjudged Evidence of an intention to levy War; and that such intention of levying War had been in that Case adjudged Treason, he had said something to the purpose; but to tell an idle story, and say, That that talk was adjudged Treason; if true, would carry no Authority with it: I would fain know what part of it is Treason; Was it *Balshal*'s troubling a Man at Plow with idle talk, or telling the Plowman a lye, or advising him to go to K. *R.* who was in another World, which was as much as bid the Plowman hang himself, in order to go to *R.* 2. and so sold him a bargain? I cannot indeed see against which Branch of the Statute of *Edward* the Third the expressions were offences. Sir *Henry Vane*'s Case was advising a War, which followed, and advising it while on Foot; and besides it was expresly proved, as I have heard, that he advised the excluding the Family of the *Stewarts* from the Crown. The Case of *Constable*, and all the other Cases are to the same purpose; because, as the Author says, and so was the reason of them, they directly tended to depose the Queen, as affirming *Edward* the Sixth was alive, and pointing to such an one, as my Lord *Coke* says; which being accompanied with other Circumstances, was good Evidence of his intention to depose the Queen: And even that Case may answer *Balshall*'s Case, in affirming *Richard* the Second to be alive; for then *Henry* the Fourth was not rightful King: But I am sure neither prove an intention to levy War to be High Treason; but a repetition of a number of Cases makes a Mutter, and a Noise. It is strange, that the Author should cite *Throgmorton*'s Case, as a Case for him; whereas it is against the expres Authority of my Lord *Coke*, who quotes *Throgmorton*'s Case for his Opinion, That conspiring to levy War is not High Treason; and the expres Authority of my Lord *Dyer*, who reports that Case, and gives the reason, That *Throgmorton* was guilty of Treason; because *Wiat*, with whom he was concerned, actually levyed War. If *A* advise *B* to kill *C*, who does it, it is Murther in both; if *B* doth it not, it is not Murther; yet *A* is equally guilty of the Consult: the Author would do well to shew the reason of the difference between this Case, and what he puts. It is strange the Author should say, *Owen*'s Case was only for dissuading

People

People from their Fidelity; whereas he ſays himſelf, his Crime was his ſaying the King might be killed, and it was no Murther: Are the Caſes of *Burton*, the Duke of *Norfolk*, *Sparhawkes*, *Awater*, *Heber*, or *Crohagan* to the purpoſe? when the Author confeſſes, their Crimes were denying the King's Title to the Crown, and endeavouring to ſettle it on another Head, which are direct Evidences of an Intention to depoſe the King; which none ever yet denyed to be Treaſon, though the Author miſtakes; for *Burton* was indicted on the 13 *El.* and it was for conſpiring to pull down Encloſures; the Duke of *Norfolk* was indicted for conſpiring the Death of the Queen, and adhering to *Herris* the *Scot*, and others the Queens Enemies; and for that purpoſe is the Duke's Caſe cited, in my Lord *Dier*, and my Lord *Coke*: In Sir *W. Aſhton's* Caſe, nothing but the Indictment appears, and it doth not appear that any Judgment was given on that Indictment, and if there were, it is plain, his Crime was endeavouring to ſet up the Duke of *York*, who had right to the Crown, and depoſe *Henry* the Sixth. The Offence of *Germain* and *Taylor*, if they were two Perſons (but *Taylor* ſeems to me to be the addition of *Germain*) was for endeavouring to Depoſe *Edward* the Fourth, and compaſſing his Death; what the Evidence againſt him was, doth not appear. *Burett's* Indictment was for compaſſing the King's and his Eldeſt Son's Death, by Witchcraft and Necromancy; and it adds likewiſe, That he endeavoured to ſtir up War, by ſcattering Ballads; where the ſcattering Ballads is rather an Overt-act of his intention to levy War, than his intention to levy War an Overt-act of his compaſſing the Death of the King, or the Death of his Son. *Collingbourn's* Caſe was for compaſſing *Richard* the Third's Death; and adhering to the Earl of *Richmond*, and other Traitors; and ſcattering Ballads to move an Inſurrection. The Viſcount *Stafford's* Caſe was for compaſſing the King's Death, and the Evidence was of Conſults tending that way, and the Authority of that Caſe ought to have been ſpared, for the ſame reaſon that *Coleman's* Caſe ought not to have been mentioned. The Legality of *Colledge's* Indictment hath been queſtioned, and was queſtioned by *Colledge*, as appears by his Trial, licenſed by his Enemies, and if thoſe in whoſe Cuſtody he was, had not robbed him of his Papers, he had raiſed ſuch Objections, that his Enemies, neither then, nor ſince, would have been able to have anſwered: And though the Author ſays he armed himſelf, and adviſed others to do the like; yet there was no pretence of Proof that he did or adviſed others ſo to do on any other account, than to defend him and themſelves, which is indeed an Overt-act of an intention to defend himſelf, but not of offending others, the firſt of which at that time was, though never at any other time hath been,

construed High Treason: But how vain is the Author to quote the Proceedings in that Trial, to justifie the Proceedings in the Lord *Russel*'s Trial, when two of the Judges were the same which sate on both Trials. What the Indictment against Sir *Henry Vane* was I know not; and I did not think it worth my time to enquire: It is plain, his Crime was making War, and deposing the King, both which, as it is said, were proved against him: And if in his Indictment, and the Indictments of *Monmouth*'s Men, it was added, That they compassed the Death of the King, it was only added as an additional Treason; and the levying War, which was so expresst in all the Indictments in the *West*, was not so expresst, as an Overt-act of compassing the King's Death, but as a distinct Treason, within the Statute of *Edward* the Third; though if it should be granted, that levying War is an Overt-act of compassing the King's Death, it doth by no means follow, that an intention to levy War, is an Over-act of compassing the King's Death, which is what the Author is to prove.

And now after all the muster of words the Author hath made, there is not one Case he hath cited, which proves, That the intention of levying War, is high Treason: What Sir *William Jones* said in the Viscount *Stafford*'s Case, I do not remember; but it was plain, his Accusation was for compassing the King's Death by under-hand dealing: And though that taking the King Prisoner is high Treason, yet the compassing it would not have been Treason, if the Words of the Statute had not made it so; no more than if the Act had said, Killing the King should be Treason; to inferr therefore, compassing his Death should be high Treason: For is it not begging the question, to say, Therefore consulting to do it is high Treason? For where is the Consequence? Coining of Money is high Treason, Doth it therefore follow, that designing to coin Money, is high Treason? And a much more remote Consequence is it to say, compassing the seizing the King's Guards, is compassing the King's Death. I deny, that designing to seize all the Forts in *England*, is high Treason, within the first branch of the Statute of *Edward* the Third; nay, the actual seizing them, was not thought high Treason within that Statute; and therefore the Statute of the 14 *Eliz.* expresly enacts, That the seizing or keeping of any of the Queen's Castles or Forts from her, shall be high Treason during her Life; which shews it was not Treason before. But if it were high Treason within the Statute of *Edward* the Third, it is within the Clause of levying War, and not the Clause of compassing the King's Death. To what purpose was it to find fault with *Rouse*'s Indictment? Was not he tried the day after the Lord *Russel* was tried, by the same Judges? And I dare say, the Author doth not think *Rouse* guilty of high Treason: *Rouse* and *Leigh* were only tricking

one another, in which *Leigh* was too hard for him, and *Rouſe* died for the ſame: But how vain is the Author to quote the Judgment of the very ſame Judges in other Caſes, to make good his *Theſis* in the Lord *Ruſſel*'s Trial, when he cannot but remember, how exploded and laughed at the Argument was of a certain Judge at the *Old-Baily*, when the queſtion was, Whether a Soldiers flying from his Colours, was Felony, without Benefit of Clergy; (a Caſe too plain to bear an Argument either way;) who had nothing to ſay for it, But that if the Law was not ſo, he had hanged many a Man wrongfully. It is ſtrange to find an Author, in ſo ſhort a ſpace as a ſheet of Paper affords, to be guilty of ſo many Repetitions; and it would be idle to repeat the Anſwer to them. Where did the Author find, that by our Law the King muſt not, cannot aſſault, ſtrike, ſeize, attach, or impriſon, in defence of Himſelf? No Man ſaid it before the Author: The Law were defective, if it were ſo, and fit to be altered: It would be worſe than binding the King to his good Behaviour. It is true, the King cannot execute the ordinary Offices of a Magiſtrate, but remit them to be executed by ſome commiſſioned by him; but what done in his own Defence, is a matter of a quite different nature. A Judge ought not to ſtrike a Man; but no Man ſaid, That if aſſaulted, he might not fight in his own defence, which he certainly may juſtifie. It is one thing for a Judge to ſtrike by way of puniſhment, which he ought to leave to his Officers; another thing to ſtrike in his defence. And now is the Author in the repeating ſtrain of his Inferences; and I muſt leave it to the Reader to judge, whether what he here or elſewhere hath ſaid, overthrows the diſtinction between an actual ſeizing, and an agreement to ſeize the Guards: I am ſure his cloſing Reaſon, that both have a tendency to the thing intended, edifies little. The King cannot live, unleſs he eats; he cannot eat, without having his Meat dreſt; he cannot have his meat dreſt without a Cook; *ergo* he that kills the King's Cook, ſtarves the King, and is guilty of high Treaſon. It is very odd for the Author to think he can evade the Objection, that Words were not Treaſon within 25. *Ed.* 3. becauſe enacted to be ſo for ſome time, by a ſaying, That that Statute was a Complement to a new-Crown'd head; what can he ſay to the Statutes of *Hen.* 8. and of the Queen, which were made when the Crown had been many years on their Heads? And why ſhould he ſay, That thoſe Statutes, as to words, were affirmative of the Old Law, when all the Judges in *Hugh Pine*'s Caſe in *Crook, Car.* on view of moſt of the Caſes cited by the Author, adjudged, That no Words were Treaſon within the Statute of *Edw.* 3. *Conſtable*, Sir *Henry Vane*, and Dr. *Story*'s Caſes have been anſwered before. *Plunkett* was adjudged by ſome of the Judges which ſate on my Lord *Ruſſell*; and I dare ſay, few believe

lieve *Plunkett* guilty of the pretended Crime he died for; but it was to make the World believe, that Juſtice was impartially adminiſtred; he was to be, and was hanged ding, dong, againſt *Fitz-harris*, to keep *Tyburn* ſteady: It was feared, that if *Fitz-harris* had hanged alone, *Tyburn* would have warped, or enclined to one ſide; and therefore they were both hanged the ſame time, on the ſame Gallows, to keep it upright. There remains but one Caſe to be anſwered; though the Author would have them two Caſes, which is the Lords *Gray*, and *Cobham*, and Sir *Walter Raleigh*; which, I confeſs, is an exact parallel Caſe, in the truth of the particulars of it, with the Lord *Ruſſell*'s Caſe, though not in the Accuſation, as I think, will be made appear. Every Man knows, becauſe it was but few years paſt, that the Lord *Ruſſell* was a Perſon zealous for the Proteſtant Religion, and an Enemy to Popery; he was for that Reaſon very active in the matter of a *Bill of Excluſion* of a Popiſh Succeſſor; and, as I have heard, carried it up from the Houſe of Commons to the Houſe of Lords: He was one who was for the proſecuting the Lord Viſcount *Stafford*, who ſuffered death for compaſſing the Death of the then Proteſtant Poſſeſſor of the Crown; the then preſumptive Heir of the Crown, was at that time eclips'd; but having recovered his Power, and, as the Lord *Holles* obſerved in his Letter to Monſieur *Van Benningham*, governing all at *White-hall*: Some few years afterwards the Lord *Ruſſell* was brought to the Block, upon pretence of the Treaſons mentioned by the Author. The Caſe of the Lords *Gray*, *Cobham*, and *Raleigh*, was this: They were all zealous for the Proteſtant Religion, and affectionate to the Perſon, and the Service of the then reigning Queen; both which they thought in danger, as long as there was expectation or probability of a Papiſt's coming to the Crown, which would be as long as the Queen of *Scots* lived, and continued to profeſs the Popiſh Religion: They well enough knew, that if the blow was ſtruck, the Law would be of the ſide of the Aſſaſſines: They had ſeen many deſigns upon the Perſon of the Queen upon that encouragement; they ſaw a Storm coming from *Spain*, which fell out in 88. and Proteſtant Subjects were not ſafe in aſſiſting, and had no encouragement to aſſiſt their Proteſtant Princeſs, as long as there was fear they might be in danger of their being puniſhed by a Popiſh Succeſſor; for which reaſon they were of Opinion, That the Popiſh Succeſſor might not only be excluded, but might and ought to be (the Law being of their ſide,) removed out of the World, which was done in 1587; for which when *Davi-ſon* was queſtioned in the *Star-Chamber*, the Lord *Grey* was againſt his being puniſhed, and would have had him rewarded, for which he gave his Reaſons in a very eloquent Speech, remembred by *Cambden*. This, as it had reaſon, provok'd her

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Son, who was to be, and was the Succeſſor to the Crown: Some time after, the Earl of *Eſſex* having loſt that Favour and Power which he thought he deſerved at Court, as it is natural, betook himſelf to the Succeſſor; and though it was concealed for ſome time, he became a great Favourite to K. *James* the Firſt. The L. *Cobham* and *Raleigh* were profeſt Enemies to the Earl of *Eſſex*, who gave them a greater advantage over him, than they could have hoped for, by breaking out into an act of open Rebellion; for which they took care he ſhould not eſcape. His Death was much regretted by K. *James*, though he durſt not take notice of it to the Queen. The Queen dying, thoſe three Perſons had reaſon to fear puniſhment from the King; and therefore would have had (if they could have prevailed) the King admitted on Articles; but being not able to carry that point, the Lord *Cobham* and *Raleigh* thought to have made their peace, by meeting the King on his Journey, congratulating his Succeſſion to the Crown, and offering him their Service, but were not permitted to come to him, and had Word ſent them, They might ſpare their labour, which preſaged no good to them. The King came to *London* in *May*, and in *July* following was the pretended Plot diſcovered; and in *November* following, the pretended Delinquents were tryed at *Wincheſter*, together with *Watſon* and *Clark*: Their Accuſations were in general, firſt to ſet the Crown on the Lady *Arabella*'s Head, and to ſeize the King. Secondly, to have a Toleration of Religion. Thirdly, to procure Aid and Aſſiſtence from foreign Princes. Fourthly, to turn out of Court ſuch as they diſliked, and place themſelves in Offices. Of theſe the firſt Article is Treaſon; what Crimes the reſt are, is doubtful; what of them was proved againſt the Lords *Cobham* and *Gray*, *Watſon* and *Clark*, or how their Tryals were managed, doth not appear: But Sir *Walter Raleigh*'s Tryal does appear, and is much like the L. *Ruſſel*'s; and therefore of ſome Circumſtances of it, I think, it is fit to take notice. Inſtead of Conſults, *&c.* in the L. *Ruſſel*'s Tryal, the cant-Words of the ſurprizing the Bie, and the Main, were made uſe of in Sir *Walter*'s, interpretable as the Council thought fit; at leaſt it was aſtoniſhing to the Jury, which was all that was deſign'd by the Council, and fatal to the Priſoners. I have no mind to run through all the ramble of Sir *W. Raleigh*'s Tryal, as it is printed before his Hiſtory of the World, becauſe the parallel is too exact, and ſticks too cloſe to the Memory of Perſons gone; only I will ſay, That if Sir *Walter Raleigh* was guilty of the things he was accuſed of by the Witneſſes, though the Accuſation did not amount to a legal Proof, it was high Treaſon; but if the L. *Ruſſell* was guilty of the things he was accuſed of, he was not guilty of high Treaſon. But yet, I think, it is fit to take notice of ſome extraordinary things in Sir *Walter*'s Tryal, particularly that when the Priſo-

ner ſaid he was tryed by the *Spaniſh* Inquiſition, if he was try'd by Circumſtances without two Witneſſes; it was told him, that was a treaſonable Speech. It was told him by the Court, that the Statutes of the 25. *Ed.* 3. and 5. *Ed.* 6. were repealed, it was told him, that his Accuſer need not be brought face to face to him, nor ſubſcribe his Confeſſion; 'twas enough that there were Hands of credible Perſons to teſtifie the Examination; it was told him, that a Man might be condemned by the Teſtimony of one Witneſs; nay, even without a Witneſs in Treaſon: He was accuſed, that he heard the Lord *Cobham* ſpeak of Penſions from *Spain*, he ſaid he could not ſtop the Lord *Cobham*'s mouth; he was accuſed with having given the L. *Cobham* a Book, treating againſt the King's Title to the Crown; he ſaid he did not give the L. *Cobham* the Book; the Lord took it off his ſhelf, and that himſelf never read it, or urg'd it; the Attorney ſaid that was cunning; Sir *Walter* reply'd, That all that made for him, was call'd cunning, what made againſt him was probable: The Priſoner was told, that by Law his Accuſer not only need not be brought face to face to accuſe him, but the Witneſs ought not to be produced, leſt he ſhould recant what he had ſaid. One *Dyer* teſtified, That a Gentleman, he knew not whom, at *Liſbon* told him, Don *Cobham*, and Don *Raleigh*, would cut the King's Throat before he was crown'd; the Attorney told him, he was by when the Earl of *Eſſex* dyed; Sir *Walter* produced a Letter from the L. *Cobham*, wherein he acquitted Sir *Walter* of all he had accuſed him of; the Jury found him guilty; Sir *Walter* ſaid the Jury muſt do as they were directed; he complained of the wrong the Attorney did him; *Brook* ſaid, that what he did in that matter, was to try faithful Subjects, and that he had a Commiſſion for ſo doing, but produced none: Sir *Walter* in his Speech on the Stage, took notice of ſeveral Calumnies raiſed of him, particularly that he had ſpoke diſhonourably of the King to a *French*-man, and had rejoiced at the Earl of *Eſſex* his Death, both which he denied. Now why the Author quotes this Caſe as a Caſe for him, I cannot imagine, neither the Fact, Accuſation, or Reſolution of it, in any point coming up to his purpoſe; for Sir *Walter* and the reſt were accuſed of the Main, which was the deſtroying the King and his Cubbs, and ſetting up the Lady *Arabella* for Queen, or at leaſt for deſigning to impriſon the King, till he yielded to their Demands; and therefore what occaſion was there for ſuch a Reſolution of the Judges, as is pretended, that conſpiring to levy War was high Treaſon within the Statute of *Ed.* 3. Nor can I find in any Book, nor do I believe there was any ſuch Reſolution: My L. *Coke* indeed ſays, in that caſe it was reſolved, That a deſign to impriſon the King was high Treaſon; but in the ſame breath ſays, that a Conſpiracy to levy War, is not Treaſon. But if the Author intends to vindicate the late Govern-

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ment, by ſhewing that in former, as well as in later times, there have been found Perſons of the long Robe, who have by irregular means brought their fellow-Subjects to the Block, upon whom their Princes frowned, I agree, he hath pick'd out a very parallel Caſe; but I am ſure inſtead of vindicating he caſts a reproach on the late Government, in which the Caſe in queſtion, and the former Government, in which the Caſe cited was tryed; for not to mention all that might be excepted to, in the Tryal of the Caſe cited, I would know by what Law is the Depoſition of a Perſon who might be brought face to face to the Priſoner, read as Evidence; I would know by what Law it is forbidden, that the Accuſer ſhould be brought face to face to the accuſed; I would know by what Law *Brookes*'s Depoſition of what the L. *Cobham* told him of *Raleigh*, was Evidence againſt *Raleigh*; I would know by what Law the ſtory *Dyer* told of what an unknown Man ſaid to him at *Lisbon* of Don *Raldigh*, was Evidence againſt *Raleigh*; I would know by what Statute the Statutes of the 25th. of *Edward* the Third, and 5th. of *Edward* the Sixth, are repealed. The Trial was ſo very irregular throughout, that I would willingly believe it was not ſo as it is related; but if it were ſo, I am ſure none can defend it: And even for that reaſon, if any ſuch reſolution was in the Caſe, as is cited, I am ſure it ought to carry no credit with it, and there is no reaſon to believe there was any ſuch Reſolution, there being no occaſion for it, the queſtion being only Fact, which Sir *Walter* denyed. The Circumſtances of his Trial, in which the Court always over-ruled the Priſoner, were ſomewhat like the L. *Ruſſel*'s, he complained of the ill uſage of the King's Counſel, as well as the Lord *Ruſſel*, and both had reaſon ſo to do; Hear-ſay was admitted to be given in Evidence againſt both; all either of them ſaid for themſelves, though very material, was ſlighted; the one was put in Mind at his Tryal of the Death of the Earl of *Eſſex*, as the other was of the Death of the Viſcount *Stafford*; both in their dying Speeches vindicated themſelves of thoſe Aſperſions; the Principal Witneſſes in both Caſes had, before the Tryals, affirmed they knew nothing againſt them; they were both accuſed with having heard what other Perſons had ſaid in their Company, and had not diſcovered it, they both gave the ſame Anſwer, that they could not help other Mens talk. I think it is plain, at this day, that of Sir *Walter Raleigh*'s is thought a ſham Plot, what the L. *Ruſſel*'s is thought, let the Author ſay; I am loth to enumerate all, but if any Perſon will give himſelf the trouble of reading, and comparing the Tryal of the L. *Ruſſel* with that of Sir *Walter Raleigh*'s, they will find them exactly parallel in a number of other Particulars. And now after all the Muſter of Caſes, the Author hath (to little purpoſe) raked together, he cannot

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ſhow me one Caſe, where the Accuſation and Proof was agreed to be no more than a Conſpiracy to levy War, or rebel; that ſuch Conſpiracy was adjudged Treaſon, within the Statute of *Edward* III. till within theſe few years. In the next place, let any Man ſhew me any Opinion or Reſolution in any printed Book of Authority, till of late years, (except the above Opinion in *Dyer*, which is anſwered,) that ſuch Conſpiracy was High Treaſon within the *Stat.* of *Edward* III. And now I appeal to all Mankind, whether it be not a full Anſwer to all the Caſes the Author hath cited, except *Plunket's*, and the Caſes of later Times. That there needed no ſuch Opinion of the Judges, as the Author puts upon them; becauſe the Endictments and Proofs (if true) on which they gave their Opinions, were Treaſon, within the *Stat.* of *Edward* the Third: And therefore why they ſhould ſtrain the Senſe of the Statute, which is penned as ſtrictly as a Law could be, to prohibit the Judges to make any other than a litteral Conſtruction of it; and therefore prohibits them to give their Judgment on any Caſe, like the Treaſons expreſſed in the Act, until ſuch Caſe ſhould be declared in Parliament to be High Treaſon; and therefore ſince no ſuch Opinion of the Judges, in the Reſolution of the Caſes entred, is to be found, or needed to be, there is no reaſon to believe they gave any ſuch Opinion. In the laſt place, I will admit that Letters make Words, and Words Senſe, and that the Author is as well able to read them as any Man; and yet I think he cannot ſhew me, That a Conſpiracy to levy War, or rebel, which is the Senſe of his Words, if he means any thing, (for there is no doubt but the Indictment contained Treaſon, it being to Kill and Depoſe the King,) is Treawith the *Stat.* of *Edward* III. let him ſhew me if he can, if that Statute will bear that Conſtruction. That that Statute which hath been always ſo highly commended in all Ages, and even by ſubſequent Acts of Parliaments, and which my L. *Coke* calls a bleſſed Act, is not guilty of the abſurdeſt Tautology imaginable. And now I own, that if the preſent Judges intend to follow the tract of ſome of their Predeceſſors in their extravagant Judgments, they ought in prudence to correct the licentiouſneſs of the Author's New Obſervator, in his Remarks; but if they reſolve to judge aright, as I do not doubt but that they do, and much good, I do not doubt, it will do them ſo to do; then I think they are not at all concerned in what he hath written, or ſhall write any Remarks upon.

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